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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/666,790	09/17/2003	Hisashi Tsukamoto	Q137-US8	9005

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EXAMINER

YUAN, DAH WEI D

ART UNIT	PAPER NUMBER
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1745

MAIL DATE	DELIVERY MODE
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07/05/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/666,790	Applicant(s) TSUKAMOTO ET AL.	
	Examiner Dah-Wei D. Yuan	Art Unit 1745	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 55 and 66-88 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 55 and 66-88 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>04112007</u> . | 6) <input type="checkbox"/> Other: ____ |

ELECTRIC STORAGE BATTERY CONSTRUCTION
AND METHOD OF MANUFACTURE

Examiner: Yuan

S.N. 10/666,790

Art Unit: 1745

May 31, 2007

Detailed Action

1. The Applicant's amendment filed on April 11, 2007 was received. Claim 55 was amended.
2. The text of those sections of Title 35, U.S.C. code not included in this action can be found in the prior Office Action issued on April 11, 2007.

Claim Rejections - 35 USC § 102

3. The claim rejections under 35 U.S.C. 102(e) as anticipated by Gartstein et al. (US 2002/0001745 A1) on claims 55,66-71,85,87,88 are withdrawn, because Applicant's arguments are persuasive.

Claim Rejections - 35 USC § 103

4. Claims 55,66-71,85,87,88 are rejected under 35 U.S.C. 102(e) as being anticipated by Gartstein et al. (US 2002/0001745 A1) in view of Nemoto et al. (US 6,378,561 b1)

With respect to claim 55, Gartstein et al. teach an electrical storage battery comprising an case (14) sealed by a first end cap (16) and a second end cap (22), wherein neither the case, the first end cap nor the second end cap has fill hole as shown in Figure 3. The battery further comprises an electrically conductive terminal pin (26) extending to the first end cap, which is

electrically insulated from the case. The cathode (32) of the electrode assembly is in electrical communication with the pin, whereas the anode (34) of the electrode assembly is in electrical communication with second end cap via a conductive bottom plate (19) (flexible conductive tab). See paragraphs 55-59,62. However, Gartstein et al. do not teach the electrically conductive terminal pin extending through the first end cap. Nemoto et al. teach an electrical storage battery comprising an case sealed by a first end cap (22) and a second end cap (21), wherein the electrically conductive terminal pin (13) extends through the first cap to extract the current of the battery outward. See Column 11, Line 58 to Column 12, Line 18. Therefore, it would have been obvious to one of ordinary skill in the art to extend the terminal pin through the end cap of the battery of Gartstein, because Nemoto et al. teach the use of such terminal pin to extract the current of the battery outward.

With respect to claims 66,68, Gartstein et al. the conductive bottom plate extends from a location adjacent to the case to a second location wherein the plate is electrically connected to the second end cap (22). See Figure 3.

With respect to claim 67, Gartstein et al. teach welds (contacts between the anode and the conductive bottom plate) connect the plate to the second end cap. See Figure 3.

With respect to claim 69, Gartstein et al. teach the second end cap is connected to the plate for a distance that is not longer than the radius shown in the second end cap. See Figure 3.

With respect to claims 70,71, Gartstein et al. teach the electrode assembly has a spirally wound jelly roll structure, which include at least one separator separating the electrodes. See Paragraph 57.

With respect to claim 85, Gartstein et al. teach at least one weld connects the cathode to the pin. See Figure 3.

With respect to claim 87, Gartstein et al. teach the terminal pin is hermetically sealed to the insulting washer or seal (24), which insulates the first end cap. See Paragraph 55.

With respect to claim 88, Gartstein et al. teach the case is electrically conductive. See Paragraph 62.

Double Patenting

5. Claims 55,66-88 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 43-45,66-86 of copending Application No. 10/665,687. Although the conflicting claims are not identical, they are not patentably distinct from each other because the conflicting claims in the examined application claim fall entirely within the scope of the copending 10/665,687 application.

Response to Arguments

6. Applicant's arguments filed on April 11, 2007 have been fully considered but they are not persuasive.

Applicant's principal arguments are

Both the present application and the '687 application result from the restriction requirement rendered on the parent application.

In response to Applicant's arguments, please consider the following comments.

There are situations wherein the prohibition of double patenting rejections under 35 U.S.C. 121 does not apply. In particular, the claims of the different applications are not consonant with the restriction requirement made by the examiner, since the claims have been changed in material respects from the claims at the time the requirement was made. For example, the divisional application filed includes additional claims not consonant in scope to the original claims subject to restriction in the patent. *Symbol Technologies, Inc. v. Opticon, Inc.*, 935 F.2d 1569, 19 USPQ2d 1241 (Fed. Cir. 1991) and *Gerber Garment Technology, inc. v. Lectra Systems, Inc.*, 916 F.2d 683, 16 USPQ2d 1436 (Fed. Cir. 1990). See MPEP 804.01. In the instant case, the independent claim 55 has been substantively amended so does the independent claim 43 in the '687 application. Obviousness-type double patenting rejections on claims 55,66-88 as being unpatentable over claims 43-45,66-86 of copending Application No. 10/665,687 are deemed proper and thus maintained.

Conclusion

7. Applicant's submission of an information disclosure statement under 37 CFR 1.97(c) with the fee set forth in 37 CFR 1.17(p) on April 11, 2007 prompted the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 609.04(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dah-Wei D. Yuan whose telephone number is (571) 272-1295. The examiner can normally be reached on Monday-Friday (8:00-5:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patrick J. Ryan, can be reached on (571) 272-1292. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR


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system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Dah-Wei D. Yuan
May 31, 2007



DAH-WEI YUAN
PRIMARY EXAMINER